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Heitzman
M.F.

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: 2-190585

DATE: MAR 10 1978

MATTER OF: Samuel A. Matthews

DIGEST:

Member should not be charged amount in excess of ceiling in 1 JTR M10004-3, for transportation of mobile home where record shows Government was overcharged.

Samuel A. Matthews, a member of the military, requests reconsideration of our Claims Division's disallowance of his claim for \$315.60 in a settlement certificate dated August 19, 1976 (Claim No. Z-2590841). The claim involved excessive labor costs checked back against Mr. Matthews incident to the movement of his mobile home in December 1973 from Norwich to Groton, Connecticut, under Government bill of lading No. M-2997358.

The record shows that the home port of the ship to which Mr. Matthews was assigned, USS LAFAYETTE (SSN616) (LUE), was changed from Charleston, South Carolina, to Groton, Connecticut. Incident to this change, Mr. Matthews was authorized movement of his mobile home from Norwich to Groton. The mobile home was transported by Chamberlain Mobilehome Transport, Inc. (Chamberlain), Thomaston, Connecticut, on December 14, 1973. Although the record indicates that the mobile home was damaged at destination, the amount of the damage and the responsibility for it are not in contention here. What is in contention is Chamberlain's Bill No. 2010, dated December 18, 1973, for \$315.60, which Mr. Matthews says has been incorrectly deducted from his military pay account.

Mr. Matthews' claim for refund was disallowed by our Claims Division because Paragraph M10005-2(5) of 1 Joint Travel Regulations states in pertinent part that all costs paid by the Government to move a house trailer in excess of the ceilings contained in paragraph M10004-3 of the regulations, shall be checked back against the member for repayment to the Government. The \$315.60 bill presented by Chamberlain and paid for by the Government was in excess of the ceiling.

Chamberlain was paid \$551.60 by the Navy Regional Finance Center on January 15, 1974. Chamberlain's voucher covered its Carrier Bills Nos. 38124 and 2010 (Voucher shows 2042 apparently in error). The charges were broken down as follows:

B-190585

Carrier's Bill No. 38124

| | |
|-----------------------------------|------------------------|
| Rate | \$ 78.75 |
| Toll | .75 |
| Oversize permit | 10.00 |
| Escort Vehicle | 35.00 |
| Unblock & reblock | 44.00 |
| Mount 2 tires @ \$2.50 ea. | 5.00 |
| Labor on 12/15/73 5 hrs @ \$12.50 | 62.50 |
| Total: | <u>\$236.00</u> |

Carrier's Bill No. 2010

| | |
|------------------------------|------------------------|
| Cinder Blocks | \$ 9.35 |
| 2 mm., 14 1/2 hrs. @ \$12.50 | 181.25 |
| Completion of relaveling | 125.00 |
| Total | <u>\$315.60</u> |

Mr. Matthews does not dispute the charges in Carrier's Bill No. 38124 to the extent it exceeds his maximum ceiling of \$.74 per mile. 1 JTR para. M10004-3-1 (change 239, Jan. 1, 1973). However, Mr. Matthews contends that Carrier's Bill No. 2010 should not have been paid by the Government because it was to correct work that was not satisfactorily performed by Chamberlain upon delivery. The record seems to support Mr. Matthews' contention.

The record shows that the mobile home was not blocked correctly upon delivery by Chamberlain and that the Personal Property Transportation Officer, Naval Submarine Base, Groton, Connecticut, authorized additional labor which apparently was performed by Chamberlain on December 18, 1973, to properly set up the mobile home. Later it was determined by a Navy inspector that the mobile home was listing at a 45 degree angle. In addition, a Navy housing inspector also stated that the mobile home was not in line with the drainage pipes. The Personal Property Transportation Officer states that a telephone call was made to Chamberlain's home office requesting that the trailer be properly placed. Mr. Chamberlain stated that due to the icy weather, he could not send personnel to the area. It was then asked if a second party could be called in to reset the trailer and bill his company for the service. At that time a Mr. J. Contino was hired to perform the re-blocking for \$125, and was to charge Chamberlain for the service. Chamberlain states that the \$125 in Carrier's Bill No. 2010 reflects this charge.

B-190585

There is a dispute in the record as to whether Mr. Contino was acting as an agent of Chamberlain. Chamberlain denies that fact; the administrative office affirms it. The question of whether an agency has been created is ordinarily a question of fact and can be determined by the relations and intentions of the parties. 3 Am. Jur. 2d Agency sec. 21 (1962). In this case Mr. Contino was aware that he was performing the reblocking for Chamberlain and the bill was accepted by Chamberlain, and later became a part of its Carrier's Bill No. 2010. ~~Thus~~, in effect if there was not an agency relationship at first, there is evidence of a ratification of the agency by Chamberlain. 3 Am. Jur. 2d Agency, sec. 160 (1962). Further, the administrative office states that Chamberlain affirmed the hiring of Mr. Contino. This raises a dispute as to a statement of fact, and we accept this statement of fact furnished by the Navy Transportation property officer in the absence of "plain and convincing" proof to the contrary. 48 Comp. Gen. 638, 644 (1969); B-190147, November 13, 1977.

Carrier's Bill No. 38124 contains a \$44 charge for unblocking and reblocking. Therefore, the record indicates that Chamberlain should not have billed the Government for \$315.60 for reblocking when those charges already were contained in its bill. These additional charges for labor to correct incomplete or incorrect blocking are in effect an overcharge and claim for refund of the overcharge will be processed in accordance with the usual procedures.

Accordingly, the settlement of August 19, 1976, will be reopened and Mr. Matthews will be allowed \$315.60; if otherwise correct.

R. V. KELLER

Deputy Comptroller General
of the United States